



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Power Dynatec Corp.--Request for
Reconsideration

File: B-236896.2

Date: April 20, 1990

Michael T. Kavanaugh, Esq., McKenna, Conner & Cuneo, for the
protester.

Eloisa Regalado, Esq., Office of the General Counsel,
Department of the Navy, for the agency.

John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Decision is affirmed on reconsideration where protester
fails to show that decision was based on error of law or
fact.

DECISION

Power Dynatec Corp. (PDC) requests reconsideration of our
decision, Power Dynatec Corp., B-236896, Dec. 6, 1989, 89-2
CPD ¶ 522, in which we denied in part and dismissed in part
its protest of an award to McCormick-Morgan Power Systems
Engineers (MMPSE), under request for proposals (RFP)
No. N00604-88-R-0086, issued by the Naval Supply Center for
a motor generator set. PDC challenges our findings that the
Navy properly reopened discussions to remedy the improper
award to MMPSE and that the Navy properly based the
subsequent award to MMPSE on that firm's offer to comply
with solicitation requirements.

We affirm our decision.

PDC asserted in its initial protest that the descriptive
literature that MMPSE submitted with its offer showed that
its offered item did not comply with certain RFP require-
ments. After reviewing PDC's protest, the Navy agreed that
MMPSE's descriptive literature was inadequate to establish
compliance with the specifications, and reopened negotia-
tions for the purpose of bringing the deficiencies to
MMPSE's attention. After a second round of best and final
offers (BAFO), the Navy again made award to MMPSE as the

048363/141228

low-priced, technically acceptable offeror. PDC argued that instead of reopening negotiations the Navy should have made award to PDC as the next low, technically acceptable offeror. We found that the Navy's corrective action was proper under the circumstances, and that the Navy reasonably determined, based upon MMPSE's second BAFO, that MMPSE had adequately established it would comply with the solicitation requirements.

PDC argues in its reconsideration request that our decision in Essex Electro Eng'rs, Inc., B-229491, Feb. 29, 1988, 88-1 CPD ¶ 215, compels a finding here that reopening of discussions was improper. We disagree. That case was factually similar to the one here in that we sustained the protest on the basis that the awardee's descriptive literature showed its offered item did not possess the called-for output rating, a material requirement. PDC is correct that we recommended that the agency terminate the awardee's contract and award to the protester. We made that recommendation because there was no evidence that the model offered by the awardee could be modified to correct the deficiency, and offering a different model of the motor-generator would have constituted a major revision of the awardee's proposal. There was no basis for reopening the competition to allow the awardee to correct its proposal. Here, the agency reopened negotiations to remedy the improper award based on its determination that MMPSE's literature could be clarified as to whether MMPSE's offered item would in fact satisfy the RFP requirements. We had no basis for questioning the agency's corrective action. Contracting officials have broad discretion to take corrective action where necessary to insure a fair and impartial competition. Oshkosh Truck Corp., B-237058.2; B-237058.3, Feb. 14, 1990, 90-1 CPD ¶ ____.

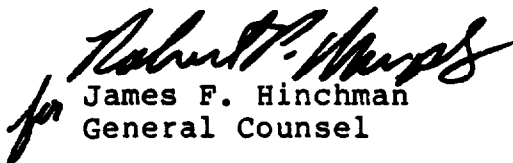
PDC also argues that the award to MMPSE following the reopening of negotiations was improper because MMPSE's second BAFO merely offered to comply with the specifications without supporting information, and thus was as deficient as its initial proposal. PDC argues that MMPSE's second BAFO constituted no more than a blanket offer of compliance, which does not satisfy the RFP requirement to provide adequate descriptive literature.

Again, we do not agree. Prior to the second BAFO request, the Navy contacted MMPSE to discuss the specifications. During these discussions, MMPSE directed the agency's attention to a letter accompanying its initial proposal stating that the descriptive literature was for general information purposes, and that the standard model it described was similar to the one required by the Navy.

MMPSE further stated during discussions that it is not uncommon for a customer to request modification to the standard item, advised that it is not a difficult matter to substitute the required winding starter for its standard reactor starter, and asserted that it had always intended to do so. The Navy then issued the second BAFO request, asking MMPSE to confirm that it would provide a winding starter as required by the RFP, and conform to all other RFP requirements, and stating that the firm must list any exceptions to the specification. MMPSE again responded that it would conform to all RFP requirements, and listed no exceptions in the BAFO.

In these circumstances, the Navy reasonably found that MMPSE's offered product would satisfy the RFP requirements. While MMPSE's second BAFO did not include a detailed explanation of how the firm would modify its standard model, based on discussions with the firm the agency reasonably was satisfied that the modification was not a complicated matter such that technical documentation was necessary. Again, the record contains no information suggesting otherwise. See Physio Control Corp., B-224491, Oct. 17, 1986, 86-2 CPD ¶ 467.

Our decision is affirmed.


for James F. Hinchman
General Counsel